

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

PIERRE PINSON,)	
)	Civil Action No. 14 – 416
Petitioner,)	
)	
v.)	District Judge Joy Flowers Conti
)	Magistrate Judge Lisa Pupo Lenihan
BRIAN COLEMAN and THE)	
ATTORNEY GENERAL OF THE)	
STATE OF PENNSYLVANIA,)	
)	
Respondents.)	

MEMORANDUM OPINION

Presently before the court is a Motion for Relief from Judgment filed by petitioner Pierre Pinson (“Petitioner”) on January 16, 2019, and pursuant to Federal Rule of Civil Procedure 60(b)(2) and (6). (ECF No. 24.) The motion was referred to a United States Magistrate Judge pursuant to the Magistrate Judge’s Act, 28 U.S.C. § 636(b)(1), and Rules 72.C and 72.D of the Local Rules of Court.

On May 10, 2019, the magistrate judge issued a Report and Recommendation (“R&R”) wherein she recommended that Petitioner’s motion be denied and that a Certificate of Appealability also be denied. (ECF No. 31.) Petitioner was informed that any written objections to the R&R were due by May 28, 2019. Instead of filing objections, however, Petitioner filed an Application for a Certificate of Appealability in the Third Circuit Court of Appeals. (ECF No. 32-1.) In a letter dated June 4, 2019, the Clerk of the Third Circuit informed Petitioner that his Application was premature because the district court had not yet entered an order disposing of

his motion. *Id.* Petitioner's Application was forwarded to this court for whatever action is deemed appropriate, but it was noted that Petitioner placed his Application in the prison mail on May 27, 2019. *Id.* Based on the forwarding of the application to this court, the court, will construe the Application for a Certificate of Appealability that Petitioner filed in the court of appeals as timely filed written objections to the magistrate judge's R&R.

In resolving a party's objections, the court conducts a *de novo* review of any part of the report and recommendation to which objections have been made. Fed. R. Civ. P. 72(b)(3); 28 U.S.C. § 636(b)(1). The court may accept, reject, or modify the recommended disposition, as well as receive further evidence or return the matter to the magistrate judge with instructions. *Id.*

Petitioner's primary, and seemingly sole contention with the magistrate judge's R&R, is the same as what he argues in his Motion for Relief from Judgment; specifically, that she erred in her analysis of his Brady¹ claim in her previous R&R dated October 14, 2014. *See* ECF Nos. 24, 32. Essentially, he claims that the magistrate judge was incorrect in that she added a due diligence requirement and applied a sufficiency of the evidence test when she reviewed the alleged Brady evidence. Petitioner claims that the magistrate judge failed to correct the error in her R&R recommending denial of his Rule 60(b) motion even when he presented her with new evidence that substantiated his Brady claim after she previously found that his evidence was insufficient. Petitioner, however, is incorrect.

The magistrate judge never analyzed Petitioner's Brady claim, and did not recommend a ruling on its merits under the AEDPA or *de novo* standards of review. Instead, she recommended that the Petition for Writ of Habeas Corpus be dismissed as untimely and reviewed Petitioner's Brady allegations only as they related to his argument that the untimeliness

¹ Brady v. Maryland, 373 U.S. 83 (1963)

of his Petition should be excused because he was actually innocent of the crime for which he was convicted. Part of that analysis entailed deciding whether the evidence Petitioner presented was “new” and “so strong that [this Court] [could not] have confidence in the outcome of [his] trial.” ECF No. 13, p.17. After reviewing the evidence, she concluded that it was neither new evidence nor evidence of Petitioner’s innocence and therefore Petitioner could not overcome the time bar. Id., pp.17-18. Nothing in her analysis, or in Petitioner’s Rule 60(b) motion, warrants vacating this court’s judgment and reopening of this case to rule on the merits of Petitioner’s claims in his untimely Petition. Accordingly, after careful *de novo* review his objections will be overruled and an appropriate order will be entered denying his motion.

Dated: June 21, 2019

/s/ Joy Flowers Conti
Joy Flowers Conti
Senior United States District Judge

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(Via CM/ECF electronic mail)